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Patent  
HF-54

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Walter Hörburger, et al  
Serial No: 09/759,543  
U.S. Filed: 1/12/2001  
For: LEVEL  
Examiner: 2859  
Art Unit: Gail Kaplan Verbitsky

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SUPPLEMENTAL BRIEF ON APPEAL

S I R:

This Brief is submitted in support of the Appeal filed  
October 16, 2002 from the Examiner's Final Rejection of claims 1  
to 5 as set forth in the Office Action dated July 16, 2002.

#### REAL PARTY IN INTEREST

The present application is owned by Ing. Guido Scheyer Sola-Meßwerkzeuge Gesellschaft m.b.H. & Co. by virtue of an assignment recorded January 12, 2001 under reel 011458/frame 0272.

#### RELATED APPEALS AND INTERFERENCES

There are no presently pending related appeals and interferences.

#### STATUS OF CLAIMS

Claims 1 - 5 are the claims in the application and are the claims on appeal.

#### STATUS OF AMENDMENTS

An Amendment after final rejection in response to the Examiner's final rejection of the claims dated July 16, 2002 was not filed. The Examiner issued an Office Action on April 3, 2003. In response to this office action, reinstatement of the appeal is being requested.

### SUMMARY OF THE INVENTION

The present invention is directed to a level.

As illustrated in the drawing and described in the first paragraph on page 7 of the specification, the level includes a level body 1 and at least one bubble level 7 mounted in the level body 1. As described in the second paragraph on page 7 of the specification, the level body 1 is of a foamed metal.

As also described in the second paragraph on page 7 of the specification, the level body 1 is of foamed aluminum.

As described in the first paragraph on page 7 of the specification, the level body 1 is provided with a coating of synthetic material.

As described in the first paragraph on page 7 of the specification, the level body 1 has at least one recess 2, 3 for at least one bubble level.

As described in the second paragraph on page 7 of the specification, the level body 1 has an inner portion 5 of highly porous metal and portions 6 adjacent the surfaces of the level

body which are of a less or hardly porous metal and form an essentially closed outer skin.

#### ISSUES PRESENTED FOR REVIEW

Whether claims 1 and 2 are unpatentable under 35 U.S.C. §103(a) over Goss et al. in view of Smith et al., whether claims 3 and 5 are unpatentable under 35 U.S.C. §103(a) over Goss and Smith as applied to claims 1 and 2, and further in view of Richardson, and whether claim 4 is unpatentable under 35 U.S.C. §103(a) as being unpatentable over Goss et al. and Smith et al. as applied to claims 1 and 2, and further in view of Provi.

#### GROUPING OF CLAIMS

Claims 2 to 5 stand or fall with claim 1.

#### ARGUMENT

It is respectfully submitted that the Examiner's rejection of claims 1 and 2 under 35 U.S.C. §103(a) as being unpatentable over Goss et al. in view of Smith et al. is in error because the references do not disclose or suggest the present level as claimed.

The examiner states that the reference to Goss et al. shows a spirit level comprising a bubble level 10, a bubble 46, a recess and a housing. The examiner relies on Smith et al. for teaching that a float (level) can be made of foamed aluminum. The examiner argues that it would have been obvious to make the level disclosed by Goss et al. of foamed aluminum material as taught by the Smith reference so as to be a lightweight and corrosion-free device.

The cited prior art reference Smith et al. shows a floating boom for retaining oil contamination on bodies of water during weather conditions with strong winds that produce relatively short choppy waves. In col. 8, lines 30 to 35, it is described that the float 21 may be produced of foamed aluminum blocks.

Self-righting floats as those described in the Smith patent are faced with entirely different problems than a level for determining horizontal or vertical alignment. Requirements that must be fulfilled by a float for containing oil contamination on bodies of water are buoyance, resistance to oil as well as high temperature resistance in the case of a fire.

Applicant respectfully submits that floats for floating booms relate to an entirely different technical field than levels

which are placed on solid surfaces in order to determine whether the surfaces are in proper horizontal or vertical alignment.

A level, on the other hand, is a measuring device which must provide great accuracy and must be manipulated by hand for measuring surfaces. The workman must be able to carry the level, move it, position it against a surface, vertically or horizontally, and the self-righting and buoyant properties of a floating body have nothing to contribute to these requirements. A level is not designed to right itself - it is designed to indicate deviations from a horizontal or vertical line. Also, it is of no consequence for a level whether it can float or not.

The particular property required of a level as discussed in the present application is high accuracy - which, as explained in the specification, is hard to achieve with synthetic materials while aluminum level bodies of a hollow configuration make it difficult to attach the bubble level. These are disadvantages for mass-producing level bodies inexpensively.

Surprisingly, great level accuracy can be achieved by producing the level body of a foamed metal, for example, foamed aluminum. The floats described in the Smith patent do not require a particular accuracy with regard to shape and the

reference to Smith also does not provide any suggestion that the use of foamed aluminum could produce a body with particularly high shape precision.

The float described in Smith et al. conveys to a person skilled in the art useful properties in connection with a floating containment, such as buoyance, resistance to oil etc. But a person skilled in the art would not look to a float to find a solution to the problem of producing a level body having great accuracy and planarity.

Claims 1 and 2 are therefore not obvious in view of the cited prior art references.

In view of the foregoing, it is submitted that the claims are allowable over the references relied on by the Examiner and the Board is respectfully requested to reverse the decision of the Examiner.

Respectfully submitted,

By



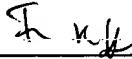
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Dated: May 20, 2003

**MAILING CERTIFICATE**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D. C. 20231, on May 20, 2003.

By:  Date: May 20, 2003  
Friedrich Kueffner



APPENDIX  
CLAIMS ON APPEAL

1. A level comprising a level body and at least one bubble level mounted in the level body, wherein the level body is of a foamed metal.

2. The level according to claim 1, wherein the foamed metal is foamed aluminum.

3. The level according to claim 1, wherein the level body has a coating of a synthetic material.

4. The level according to claim 1, wherein the level body has at least one recess for the at least one bubble level.

5. The level according to claim 1, wherein the level body has an inner portion of highly porous metal and portions adjacent surfaces of the level body which are of a less or hardly porous metal and form an essentially closed outer skin.